

IN THE MATTER OF LICENSE NO. 284195 MERCHANT MARINER'S DOCUMENT
No. Z-246397 AND ALL OTHER SEAMAN DOCUMENTS

Issued to: EDWARD E. BUTLER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1494

EDWARD E. BUTLER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 7 October 1964, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended Appellant's seaman documents for three months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as Third Mate on board the United States SS PRESIDENT JOHNSON under authority of the license above described, on 30 June 1964, Appellant wrongfully failed to perform properly his duties as watch officer from 0000 to 0205 due to intoxication while the vessel was en route from New York to Boston.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the Master of the vessel. Appellant testified in his defense.

The hearing was completed on 8 July 1964 except for the decision of the Examiner, rendered on 7 October, in which he concluded that the charge and specification had been proved and entered the order suspending all documents, issued to Appellant, for a period of three months' probation.

FINDINGS OF FACT

On 30 June 1964, Appellant was serving as Third Mate on board the United States SS PRESIDENT JOHNSON and acting under authority of his license while the ship was proceeding from New York City to Boston. Appellant has had a Master's license for approximately 20 years. Appellant went to the bridge to stand the 0000 to 0400 watch on 30 June. The ship was under way south of Long Island on an easterly course and scheduled to be abeam of Block Island at 0400. The Master was on the bridge when Appellant relieved the watch. Since the Master smelled a strong odor of alcohol on Appellant at this time, his conduct was closely observed by the Master until he relieved Appellant at 0205 and sent him below.

Shortly after midnight, the Cape Cod Canal pilot came to the bridge and requested that he be called when they reached Block Island. Appellant told the pilot that the ship had passed Block Island. When the Master asked Appellant for the ship's course, he did not know it.

While attempting to determine the position of the ship by visual bearings, Appellant could not read the large scale chart in use; he could not identify the proper lights in the light list; he was unable to locate any of the lights on which to take bearings until they were pointed out the Master; Appellant could not obtain accurate visual bearings or plot them on the chart to fix the position of the ship; and he attempted to obtain bearings by looking in the wrong end of the telescopic alidade. The "fix" finally obtained by Appellant was in error by more than eight miles.

Although the Master noticed that Appellant staggered and spent considerable time in the chartroom apparently "staring into space," the Master allowed Appellant to stay on watch until it was apparent that his condition was not improving.

In the Official Logbook entry pertaining to this incident, the Master included a statement that Appellant was not a competent officer even when sober. Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner gave too much weight to the testimony of the Master and too little weight to that of the Appellant despite the animosity shown toward Appellant by the Master's statement in the Official Logbook and the total lack of corroboration (of the Master's testimony) which was really available if his testimony was true.

Appellant has an unblemished record for 28 years and received a letter of commendation from the Coast Guard in 1957 for his services in the rescue of twenty persons from a vessel at sea. Such a record should not be marred by such evidence as is present here. Therefore, it is respectfully submitted that the finding and conclusion that Appellant was intoxicated should be reversed and the charge of misconduct dismissed.

APPEARANCE: Pierson and Pierson of Baltimore, Maryland by Edward Pierson, Esquire, of Counsel

OPINION

I agree with the Examiner's conclusion that there is substantial evidence to show that Appellant failed to perform his duties properly due to intoxication. It is not likely that further corroboration of the Master's testimony as to Appellant's conduct would increase the reliability of the

Master's testimony because Appellant's testimony substantially agrees with that of the Master as to what Appellant did or did not do during these two hours on watch, but Appellant attempts to explain his conduct as that of a sober man. Among other things, he testified that he had two beers ashore, slept until called to go on watch, and joked with the pilot about having passed Block Island. Appellant also said he could not read the chart in the dim light without eyeglasses and he was not used to taking bearings with an alidade. But Appellant admitted that he took improper bearings and he did not deny that he was unable to determine the position of the vessel by obtaining and plotting visual bearing.

Accepting the testimony that there was a strong odor of alcohol on Appellant and the admitted facts with respect to Appellant's inability to plot even a reasonably accurate fix, the only logical inference is that this inability, on the part of a seaman with Appellant's extensive experience, was due to intoxication. This conclusion seems to be inescapable regardless of whether or not the Master bore some animosity toward Appellant as is contended on the basis of the statement on the logbook entry that Appellant was not competent when sober. Again, Appellant's service for more than 25 years as a licensed officer belies this statement. Hence, the veracity of the Master's opinion that Appellant was intoxicated is corroborated by Appellant's own testimony to the extent that he admits conduct which is not otherwise satisfactorily explained.

The record indicates that, due to his intoxicated condition Appellant was not able to perform his primary function of navigating ship by determining her position and keeping a lookout to avoid any danger which might have developed. Since such conduct would have jeopardized the vessel and 53 lives if the Master had not remained on the bridge, the order of suspension on probation was extremely lenient despite Appellant's prior unblemished disciplinary record and his record of commendation by the Coast Guard.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 7 October 1964, is AFFIRMED.

W. D. Shields
Vice Admiral., United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 26th day of March 1965.

INDEX

EVIDENCE

corroboration by admitted facts

FAILURE TO PERFORM DUTIES

intoxicated, ordered off watch
intoxication as cause
intoxication, deck watch officer

FAILURE TO STAND WATCH

intoxication as cause
intoxication, ordered to leave

INTOXICATION

offense resulting from

OFFICERS, SHIPS

intoxication on watch

ORDER OF EXAMINER

lenient